

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

EILEEN MALUCCI-AMERO

Case No. 94-10112 K

Debtor

MEMORANDUM AND ORDER

The Debtor seeks, under 11 U.S.C. § 554(b), to compel the Trustee to abandon her undivided fractional interest in the remainder of real estate of which her mother is the life-tenant.

The Debtor's Motion must be denied. The Trustee must at the least be given a fair opportunity to market the interest, free of collusive influences. See 11 U.S.C. § 363(n). It is also possible that a decision to wait until the remainder interest ripens into an interest in the fee (which is an option, available to the Debtor, to which option the trustee has succeeded) may be reconciled with his otherwise seemingly countervailing duty to "collect and reduce to money the property of the estate ..., and close such estate as expeditiously as is compatible with the best interests of parties in interest." 11 U.S.C. § 704(1).

The Court need not today determine the outside limits of a trustee's discretion to sit and wait.¹ It is sufficient that the

¹Consider the cases cited at footnote 2 of Collier 15th Edition, ¶ 554.02[1]: *In re Wiseman & Wallace*, 159 F.236 (E.D. Pa. 1908) (finding a twelve year delay reasonable); *In re Aldrich's Estate*, 35 Cal. 2d 20, 215 P.2d 724 (1950) (finding a twenty-five year delay reasonable); but see *Sparhawk v. Yerkes*,

Court conclude that the relevant date for determining whether the property is "of inconsequential value and benefit to the estate" for purposes of 11 U.S.C. § 554(b) is not the petition date.² Nor is it the motion date, where the motion is brought by the Debtor who is not prejudiced by any delay, and who cannot demonstrate that the asset is wasting or "evaporating."³

Motion denied.

SO ORDERED.

Dated: Buffalo, New York
October 7, 1994

/s/Michael J. Kaplan

U.S.B.J.

142 U.S. 1, 12 S.Ct. 104, 35 L.Ed. 915 (1891) (finding a twelve year delay to be too long).

²See, *In re Schroeder*, 356 F.Supp. 417 (E.D. # Wis. 1973). The present Court, upon careful reflection, now concludes that the Trustee may do with the remainder interest whatever the Debtor could have done with it. The Court rejects the argument that the remainder is an asset separate and distinct from the individual fee interest that will someday exist.

³*In re Ira Haupt & Co.*, 398 F.2d 607 (2nd Cir. 1968).